

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FELIX BRIZUELA,

Plaintiff,

v.

HIGHMARK BLUE CROSS BLUE SHIELD  
OF PENNSYLVANIA,

Defendant.

2:23-CV-00337-CCW-PLD

**MEMORANDUM ORDER**

This case has been referred to United States Magistrate Judge Patricia L. Dodge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On March 3, 2023, the Magistrate Judge issued a Report, ECF No. 6, recommending that pro se Plaintiff Felix Brizuela's Complaint, ECF No. 4, be dismissed. Specifically, the Magistrate Judge recommended that the federal claim under 42 U.S.C. § 1983 be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e), which requires the Court to dismiss a complaint that is frivolous, is malicious, or fails to state a claim, and that the district court decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c) over the remaining state claim alleging breach of contract. Service of the Report and Recommendation ("R&R") was made on Mr. Brizuela.

Prior to the expiration of the objection period, Mr. Brizuela filed a Motion for Leave to Amend the Complaint. *See* ECF No. 12. The Court must liberally construe pro se submissions, so this Motion will be construed as an objection, such that the more stringent *de novo* standard of review applies.

After a *de novo* review of the pleadings and documents in the case, together with the R&R and the Objections thereto, the following Order is entered:

The Complaint, ECF No. 4, is **DISMISSED** as follows:

1. Mr. Brizuela's 42 U.S.C. § 1983 claim is **DISMISSED WITH PREJUDICE** for a failure to state a claim pursuant to 28 U.S.C. § 1915(e); and
2. Mr. Brizuela's remaining breach of contract claim is **DISMISSED WITHOUT PREJUDICE** to be adjudicated in state court as the Court declines to exercise its supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3).

The R&R, ECF No. 6, is adopted as the Opinion of the District Court.

The Court agrees with the R&R that amendment of the Complaint would be futile. *See* ECF No. 6 at 8 (declining to provide Mr. Brizuela an opportunity to amend his complaint because doing so would be futile). Therefore, to the extent that Mr. Brizuela's Motion for Leave to Amend the Complaint, ECF No. 12, is construed as a Motion for Leave to Amend, rather than as objections to the R&R, IT IS HEREBY ORDERED that his Motion is **DENIED**.

IT IS SO ORDERED.

DATED this 12th day of April, 2023.

BY THE COURT:

/s/ Christy Criswell Wiegand  
CHRISTY CRISWELL WIEGAND  
United States District Judge

cc (via United States Mail):

Felix Brizuela, pro se  
1103 Redoak Dr.  
Harrison City, PA 15636